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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,136	09/13/2000	John Griebat	1708	7699

7590 04/21/2003

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EXAMINER

HONG, WILLIAM

ART UNIT

PAPER NUMBER

3725

DATE MAILED: 04/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/661,136	GRIEBAT ET AL.
	Examiner William Hong	Art Unit 3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 25 March 2003.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 5-12 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 5-12 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Disposition of Claims**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 13 September 2000 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response To Amendment***

Applicant's amendment received March 25, 2003, has been entered and fully considered.

An action on the merits follows.

### ***Drawings***

Applicant's amendment of the specification sufficiently overcomes the drawing objections of the prior Office Action.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claims 6-10 are dependent on cancelled claim 1. For purposes of this Office Action, the Examiner has examined claims 6-10 as dependent upon claim 5.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5 and 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Giguere (USP 5,250,313). Giguere discloses in figure 5 a method for processing kernels of corn in a mill stream to produce a desired end product comprising, *inter alia*; cleaning the kernels (“corn cleaning”); degerminating the kernels after cleaning (“DEGERMINATE”); breaking the kernels (“1ST BRK ROLL”); separating the parts using at least two separation steps (“1ST BRK SIFT”, “2ND BRK SIFT”); removing at least one size class as the desired end product after at least two separation steps (see stream from “1ST BRK SIFT” to “MEAL GRADE”); removing at least one size class as the desired end product after at least two separation steps (see stream from “2ND BRK SIFT” to “MEAL GRADE”); removing at least one of said size class as the desired end product after each separation step (see stream from “1ST BRK SIFT”, “2ND BRK SIFT”, “3RD BRK SIFT”, etc. to “MEAL GRADE”); diverting one or more size classes to a germ oil recovery (see stream leading to and from “TO OIL RECOVERY”); and diverting one or more size classes to an aspirator and diverting the aspirated grain to a roller (see stream leading to and from “ASPIRATORS”).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giguere. Giguere has been described. Additionally, Giguere discloses using various size sieves, including number 12 and number 30 (column 11, line 34 through column 12, line 49). Giguere does not disclose using sieve size numbers 6 and 62. However, it has been held that it is not inventive to discover the optimum or workable ranges by routine experimentation when general conditions are disclosed in the prior art. *In re Aller*, 220F, 2d 454, 105 USPQ 233 (CCPA 1955). Giguere sets forth the general condition of using various size sieves and thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to discover the optimum or workable ranges for using a desired size sieve to obtain a desired size end product.

### ***Response to Arguments***

Applicant's arguments received March 25, 2003, have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Hong whose telephone number is 703-308-9619. The examiner can normally be reached on Mon-Thu, 8:00a-6:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen Ostrager can be reached on 703-308-3136. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.



William Hong  
Primary Examiner  
Art Unit 3725

April 17, 2003